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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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CIRION B SPRINGFIELD

Plaintiff

V

CDCR, et al.,

Defendants.

No. 2:22-CV-0444-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. On September 6, 2022, the District Judge directed Plaintiff to pay the filing
19 fees for this case within 21 days. Plaintiff was warned that failure to resolve the fee status may
20 result in dismissal of this action for lack of prosecution and failure to comply with court rules and
21 orders. See Local Rule 110. As of November 8, 2022, Plaintiff had not complied and the Court
22 issued findings and recommendations that this action be dismissed for lack of prosecution and
23 failure to comply with court rules and orders. On November 30, 2022, Plaintiff filed objections to
24 the findings and recommendations. On December 16, 2022, the Court vacated the November 8,
25 2022, findings and recommendations and granted Plaintiff an additional 30 days to comply with
26 the District Judge's September 6, 2022, order. Plaintiff was again warned that failure to comply
27 could result in dismissal of the entire action. To date, Plaintiff has not complied.

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1 The Court must weigh five factors before imposing the harsh sanction of dismissal.
2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
4 expeditious resolution of litigation; (2) the Court's need to manage its own docket; (3) the risk of
5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
11 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an
12 order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
13 1992).

14 Having considered these factors, and in light of Plaintiff's failure to pay the filing
15 fees as directed, the Court finds that dismissal of this action is appropriate.

16 Based on the foregoing, the undersigned recommends that this action be dismissed,
17 without prejudice, for lack of prosecution and failure to comply with court rules and orders.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court. Responses to objections shall be filed within 14 days after service of
22 objections. Failure to file objections within the specified time may waive the right to appeal. See
23 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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25 Dated: February 15, 2023



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
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